

**STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION**

**MELVIN BUTCH HOLLOWELL, in his
official capacity as AUTOMOBILE and HOME
INSURANCE CONSUMER ADVOCATE,
STATE OF MICHIGAN, on behalf of
MICHIGAN CONSUMERS,**

Petitioner,

**KENNETH M. ROSS
Insurance Commissioner**

Case No. _____

v.

**ALLSTATE INSURANCE COMPANY,
an Illinois corporation, ALLSTATE FIRE
AND CASUALTY INSURANCE COMPANY,
an Illinois corporation, ALLSTATE INDEMNITY
COMPANY, an Illinois corporation, ALLSTATE
PROPERTY AND CASUALTY INSURANCE
COMPANY, an Illinois corporation, and DEERBROOK
INSURANCE COMPANY, an Illinois corporation,
All authorized to do business in Michigan, Jointly
and Severally,**

Respondents.

_____ /

For the Petitioner:

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Ottawa State Office Building, 4th Floor
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(517) 241-2983**

For the Respondent:

**David E. Field (P-24298)
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Farmington Hills, MI 48331
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**COMPLAINT AND PETITION
REQUESTING A CONTESTED CASE HEARING**

I. Statement of Facts

This Complaint and Petition Requesting a Contested Case Hearing ("Petition"), is brought by the Automobile and Home Insurance Consumer Advocate for the State of Michigan ("Advocate"), against the Allstate Respondents set forth in the above-stated caption (hereafter collectively referred to as "Allstate" and/or "Respondents"). Founded in 1931, Allstate is the largest publicly-traded property and casualty insurance company in the United States, and is among the top three (3) largest companies selling car insurance in Michigan.

A. Allstate Ranks Michigan's Drivers "Safest" in the Nation

Beginning in 2005, Allstate began issuing a comprehensive, national study of driver safety in America's 200 largest cities, known as "Allstate America's Best Drivers Report." The Report measures the time between accidents. Michigan drivers were highly-ranked in the 2005, 2006, and 2007 Reports. And in the July, 2008 Report, Michiganians were ranked as the safest drivers in the nation. With much national fanfare and press interviews with the national media, Allstate's public news release represented that in its "Most Improved" category:

"Allstate compared all three years of report data to identify cities with the most-improved drivers since 2005. A flock of Michigan cities landed in the top five slots, these include Sterling Heights, Detroit, Grand Rapids, Warren, and in first place, Flint. With remarkable progress, Flint improved its average years between accidents from 9.8 years in 2005 to 13.4 years or 25.4 percent better than the national medium in 2007, and leaped from the number 73 spot in 2005 to number 3 overall in 2007 in three years."

And in the overall "safest" category, Michigan drivers again finished at the very top of the national rankings. Specifically, in the "Top 10" were Sterling Heights (Number 4), Warren (Number 5), Grand Rapids (Number 7), and Detroit (Number 10). In fact, the Report indicated that Detroit was ranked as the safest city in the category of municipalities with populations from 500,000 to one million. Allstate explained its findings with particularity:

"We've seen a nearly continual decrease in crashes statewide in Michigan in the last 10 years, including a 54% decrease in serious injury crashes – that's 9,000 fewer seriously injured people in 2006 compared to 1996. This progress in crash reduction is evident also in the Statistics for the five cities highlighted in this report by Allstate," explains David Morena, Safety and Traffic Engineer, Federal Highway Administration, Lansing, Mich[igan].

“We attribute this reduction in the overall number and severity of crashes to a combination of positive actions taken by the agencies that promote traffic safety: safety legislation, such as the primary seatbelt law, and graduated licensing for our younger drivers...”

[Source: <http://media.allstate.com/categories/7-news-releases/releases/4294-3rd-annual-allstate-americasbestdriversreport>, pp. 1-2].

B. Allstate's Report is an Indictment of the Insurance Industry's Unfair Car Insurance Rates in Michigan

Despite No Fault's promise of lower rates, Michigan has some of the highest rates for car insurance in the nation. Our \$1,000 state-wide annual average premium is just below New Jersey's most-expensive-in-the-nation \$1,100 annual premium. Our \$436 state-wide average annual collision premium is the most expensive in the United States. And our \$5,000 average urban premium is America's priciest (a full \$1,500 higher than 2nd place Philadelphia). Since 1989 our state-wide average rate has skyrocketed by 69%. The fastest rate of increase in the nation.

At the same time, because Michigan has essentially de-regulated the insurance industry, insurance companies like Allstate are reaping excessive profits. And their requests to continually raise rates are automatically approved, without prior review or a hearing, because our toothless “file and use” system allows it.

But the Allstate Best Drivers Report has actually turned out to be extremely problematic for Allstate and other insurers. Crashes and serious accidents make up the most significant portion of the premium. It goes to the heart of the cost structure of premium calculations. So if are down dramatically in Michigan, as Allstate's Report indicates, then consumers' rates should be going down correspondingly. Yet, this has not been the case in Michigan. Crashes are down. And rates are up.

The Advocate's Office has seized upon this contradiction in publications, on the state's website, in the print and electronic media, at public hearings, and in meetings with executives in the insurance industry. The question has regularly been posed to insurer representatives, by the Advocate, “How do you explain the inherent contradiction in the Allstate Report and Michigan's escalating rates?” More often than not, there is dissembling, or most often the response, “Well we haven't read the Report.”

The Advocate has read the Report. It concludes that Michigan drivers are doing a good job. And it undercuts the industry's central rationale for raising rates.

**C. Allstate to Michigan Drivers: On Second Thought,
You're not so Safe After all. We Take it Back**

Immediately following a series of published editorials in newspapers across the state, citing the Report, and its inconsistency with Michigan rates, last week, the Advocate received a letter, dated September 18, 2008, from David E. Field, Allstate's Regional Counsel, North Central Region ("Exhibit A"). The letter indicates that Allstate has suddenly discovered that its Report is inaccurate. Mr. Field states that Michigan drivers are not actually the safest because:

"Dear Mr. Hollowell...since we published the report in July, we became aware that the comparison of the Michigan data with national data was not adjusted correctly to reflect Michigan's unique Auto No-Fault approach to third-Party property damage. Michigan is the only State With a No-Fault [property damage] system...When the information was gathered to compare the 200 largest cities, the adjustments necessary to properly compare Michigan's unique PD system to the rest of the country's PD data were not introduced into the raw data. The actuaries have now introduced those factors and recalculated the data...The discrepancy existed because Michigan's property damage ledger as a general rule does not account for payouts for other moving vehicles (subject to a possible \$500 mini tort exception)...We regret that "Allstate America's Best Drivers Report" was inaccurate. We are preparing to alert The Michigan media to our position on this."

[Source: D. Fields 9/18/08 letter to M.B. Hollowell]

D. Allstate's Willful Manipulation of the Claims Data from Michigan, in its "Revised" Report Constitutes a Violation of the state's Unfair Trade Practices Act and the rate-making section of the state's Essential Insurance Act

1. The medical benefits provided for under Michigan's No-Fault law have no impact on the number of crashes that occurred in our state. Either there were 9,000 fewer crashes, as the Report states, or there were not.
2. It is vital that the focus remain on the documented reduction in the Michigan accident count. Allstate's letter is cleverly designed to shift our attention away from the raw data, supported by the Federal Highway Administration, indicating a 54% reduction in serious crashes in

Michigan between 1996 and 2006. And for the sake of argument, even if Allstate made an error by leaving out No Fault property damage data, from Michigan crashes, **claims are still dropping while prices are rising**, using either database.

3. Allstate has been writing insurance in Michigan for each of the 35 years our No Fault law has been in effect. Allstate's lobbyists helped to write the law. Allstate has offices and agents all across the state. Allstate has an army of actuaries, accountants, economists, lawyers and lobbyists. **And now, after 35 years, Allstate is asking the Michigan public to believe that in September of 2008, it just now happened to notice that Michigan is a No Fault state.**
4. Furthermore, Allstate, which has issued 3 "Best Drivers" Reports prior to the Report at issue, would have the Michigan public believe that it did not notice that Michigan was a No Fault state in any of its previously-released Reports, at any time, in any of those previous years. **Allstate's contention is that it discovered the "error", coincidentally, right after the Report was used to undercut the industry's justification for high rates.**
5. Allstate's attempt to retract the Report's conclusions about the safety of Michigan's drivers is **a transparent attempt by Allstate to justify another increase in car insurance rates.**
6. If Allstate is wrong about such a fundamental matter, it begs the question: what else are they wrong about? **Can we trust their rates?**
7. The Advocate's position is that **Allstate has forfeited its credibility**, and in the process, it has run afoul of the Michigan Unfair Trade Practices Act and the Essential Insurance Act.

With virtually no accountability, for years, insurance companies like Allstate have engaged in a pattern and practice of anti-consumer conduct that has resulted in huge profits for them, and higher rates for us. **Those days are over.**

II. Jurisdiction of the Insurance Commissioner

1. The Commissioner of Insurance of the State of Michigan ("Commissioner"), has the authority to hear this matter, to investigate the allegations herein, to order a Contested Case Hearing (a fact-finding process), and to order such other relief as is appropriate under Michigan statutory and regulatory law, pursuant to:
 - A. P.A. 218 of 1956: authorizes the Commissioner to review a Consumer's Complaint relevant to the delivery or administration automobile insurance products.
 - B. Rule 500.2103: allows the Commissioner to consider Contested Case Petitions.
 - C. Rule 500.2103: provides that the Commissioner may "investigate the allegations set forth in [a Contested Case] Petition".

III. Standing and Parties

1. The Advocate has the authority to initiate this proceeding pursuant to State of Michigan, Office of the Governor, Executive Order No. 2008-2, section IV(B)(1), ("**Exhibit B**"). The applicable language states as follows: the Advocate may "[a]pppear, intervene, and be heard before the Commissioner, as a party or otherwise on behalf of insurance consumers, in any matter affecting automobile insurance..."
2. The Advocate, on behalf of aggrieved Consumers, may request a hearing before the Commissioner, pursuant to MCL 500.2458.
3. Allstate is a company which is licensed to offer automobile insurance products in the State of Michigan and is therefore a proper party under R.500.2103 (3) (D).

IV. Applicable Law

1. Allstate's Revised Report and its September 18, 2008 letter from Allstate Regional Counsel Fields, to Advocate Hollowell, constitutes **false, deceptive, and/or misleading advertising**, pursuant to the Michigan Unfair Trade Practices Act (MCL 500.2007).
2. Allstate's Revised Report and its September 18, 2008 letter from Allstate Regional Counsel Fields to Advocate Hollowell, constitutes an **improper pretext to raise car insurance rates** in Michigan, pursuant to the Essential Insurance Act (MCL 500.2114).

V. Relief Requested

1. Petitioner Advocate respectfully requests the Commissioner to undertake fact-finding and/or a preliminary investigation of Respondent Allstate's full before and full after Report data, and to allow Petitioner Advocate's actuary to examine the underlying source documents. The information to be supplied by Respondent Allstate should, therefore, be complete and otherwise sufficient for such an actuarial examination.
2. Petitioner Advocate respectfully requests that the Commissioner require Respondent Allstate to replicate the information in its Report, with the underlying change in claim count data, **before** application of the "newly discovered" physical damage data, and **after** application of the "revised" physical damage data, and to produce same for examination by Petitioner Advocate's actuary.

3. Petitioner respectfully further requests the Commissioner to hold a public evidentiary hearing in this matter, allowing the parties:

- A. Limited Discovery
- B. Oral Argument
- C. The opportunity to call witnesses

4. Upon the conclusion of said proceedings, Petitioner Advocate respectfully requests the Commissioner to issue written findings.

5. In the event Respondent Allstate is found by the Commissioner to be in violation of state statute or rule, Petitioner Advocate respectfully requests the Commissioner to impose such penalties as are appropriate, including, but not limited to:

A. Monetary sanctions, and

B. An examination of:

- (i) Respondent Allstate's most recent rate increase filing to determine its accuracy or inaccuracy, in light of the material errors exposed in its revised "Best Drivers" Report, and
- (ii) Whether Respondent Allstate has factored into its rate filings, the fact that Michigan consumers are driving significantly fewer miles due to high gasoline prices. This significant reduction in miles driven is one of the single largest factors in the calculation of premium cost. Has Respondent Allstate acknowledged the reduced miles driven, and passed the appropriate savings on to Michigan consumers in the form of premium reductions or rebates?

VI. Conclusion

For the reasons outlined above, Petitioner Advocate hereby respectfully requests the Commissioner to grant its request for a Contested Case Hearing, and such other relief as is warranted in this matter.

By: 

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